

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

COMERICA BANK,
Plaintiff

v.

Case No.: 2015-10404-GAD-MJH
Judge: Gershwin Drain
Magistrate: Michael Hluchaniak

COURTYARD FOOD MARKET, INC.,
VANESSA MOSS-WILSON, STEPHEN
NESMITH, Conservator for the Estate of
Edmond Phillips II, LINCOLN LIFE &
ANNUITY COMPANY OF NEW YORK and
BANK OF AMERICA, N.A.
Defendants.

STIPULATED ORDER FOR INTERPLEADER RELIEF

Upon reviewing the parties' proposed final order disposing of all pending claims by or against all parties, the Court makes findings, and orders, as follows:

FACTUAL PREMISES

This order is based upon the following undisputed facts which are adopted as findings by this Court:

- A. On December 26, 2014, Defendant Courtyard Food Market Inc. deposited, for credit to its deposit account at Comerica Bank, a check dated August 27, 2014 payable to the order of "Vanessa Moss-Wilson, special fiduciary for the Estate of Edmond Wilson, II" in the amount of \$25,000 as drawn by

Lincoln Life Annuity Company of New York on its account with Bank of America, N.A. (the “Check”).

B. At one time, Edmond Phillips II was under the supervision of the Wayne County Probate Court in Michigan as a developmentally disabled person (Wayne Probate Docket No: 2000-624188-DDT).

C. Edmond Phillips II has resided in Alabama for a number of years.

Defendant Stephen NeSmith currently serves as court appointed conservator for the Estate of Edmond Phillips II under the supervision of the Montgomery County Probate Court in Alabama (Montgomery Probate Docket No: 08-00410).

D. Although Vanessa Moss-Wilson once served as a court appointed special fiduciary for the Estate of Edmond Phillips, II when the Estate was a pending proceeding in Wayne County Probate Court, her appointment as special fiduciary ended many years ago.

E. As a result of these and other irregularities alleged in the complaint, Comerica Bank filed this action requesting interpleader relief rather than releasing the proceeds of the Check to Courtyard Food Market Inc. The proceeds of the Check constitutes the interpleader stake in this action.

F. Although the Check purported to bear the endorsement of Ms. Moss-Wilson at the time that Courtyard Food Market Inc. deposited the Check with

Comerica Bank, Ms. Moss-Wilson has disavowed her purported endorsement and has disclaimed any interest in the interpleader stake in this action. This Court has previously entered an order dismissing her from this action.

G. Both Lincoln Life Annuity Company of New York and Bank of America, N.A. have filed pleadings with this Court indicating that neither of them claims any interest in the interpleader stake in this action.

H. The Clerk of this Court has entered default against Courtyard Food Market Inc. as the result of that defendant's failure to file a responsive pleading or otherwise defend.

I. The Estate of Edmond Phillips II is entitled to the proceeds of the Check.

J. In its complaint for interpleader relief, Comerica Bank requested payment of its attorney's fees and costs out of the interpleader stake.

K. Comerica Bank's attorney's fees and costs in this matter are \$4,952.50.

L. The Estate of Edmond Phillips II consents to Comerica Bank's requested relief on the conditions that the remainder of the Check proceeds are disbursed payable to the Estate of Edmond Phillips II and that this order shall not affect its rights to seek reimbursement from Lincoln Life Annuity Company of New York for the attorney's fees and costs awarded herein.

THEREFORE, in exercise of this Court's jurisdiction under 28 U.S.C. 1335 to grant interpleader relief,

IT IS ORDERED

1. Comerica Bank is entitled to interpleader relief to determine the parties' rights in the Check, the proceeds of the Check and the interpleader stake in this action and to relieve Comerica Bank from the risk of multiple liability.
2. Except for a determination of Comerica Bank's request for payment of attorney's fees and costs out of the interpleader stake, the Estate of Edmond Phillips II is adjudged to have exclusive rights in the Check, the proceeds of the Check and the interpleader stake in this action.
3. Courtyard Food Market Inc. is adjudged to have no lawful interest at all in the Check, the proceeds of the Check or the interpleader stake in this action. Default judgment is entered against Courtyard Food Market Inc.
4. Lincoln Life Annuity Company of New York is adjudged to have no interest at all in the Check, the proceeds of the Check or the interpleader stake in this action. This action is dismissed with prejudice with regard to Lincoln Life Annuity Company of New York, subject to the right of the Estate of Edmond Phillips II to seek reimbursement of all monies awarded to Comerica Bank as attorney's fees and costs herein from the Check.

5. Bank of America, N.A. is adjudged to have no interest at all in the Check, the proceeds of the Check or the interpleader stake in this action. This action is dismissed with prejudice regard to Bank of America, N.A.
6. This order constitutes the final, exclusive adjudication of the parties' rights in the Check, the proceeds of the Check or the interpleader stake in this action.
7. Comerica Bank is awarded reimbursement of its attorney's fees and costs out of the interpleader stake in the amount of \$4,952.50.
8. Comerica Bank shall disburse the remainder of the interpleader stake in the amount of \$20,047.50 payable to Stephen NeSmith as conservator for the Estate of Edmond Phillips II.
9. Upon payment as directed by this Order, Comerica Bank Comerica shall be forever released and discharged by all defendants, their beneficiaries, assignees and successors, from any and all liability, damages, losses, claims, and demands, of whatever nature or kind, known or unknown, relating to or arising out of the events and transactions alleged in the complaint.
10. This action is dismissed with prejudice subject only to the rights of Stephen NeSmith to seek subsequent relief as necessary to enforce his right to payment under the terms of this order.

/s/Gershwin A Drain
UNITED STATES DISTRICT JUDGE